

MEMO# 20605

November 22, 2006

West Virginia Supreme Court Rejects Physical Presence Test for State Income and Franchise Taxes

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20605] November 22, 2006 TO: ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 12-06 TAX MEMBERS No. 41-06 RE: WEST VIRGINIA SUPREME COURT REJECTS PHYSICAL PRESENCE TEST FOR STATE INCOME AND FRANCHISE TAXES The West Virginia Supreme Court of Appeals held in *Commissioner v. MBNA America Bank, N.A.*¹ (attached) that West Virginia constitutionally may impose an income tax on a corporation that lacks physical presence in the state. The West Virginia Supreme Court affirmed the decision of the Appeals Court and concluded that the physical presence standard announced by the U.S. Supreme Court in *Quill Corp. v. North Dakota*² is limited to sales and use taxes. Karen Lau Gibian Assistant Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 20605, or call the ICI Library at (202) 326-8304 and request the attachment for memo 20605. 1 W.Va. Sup. Ct., No. 33049 (Nov. 21, 2006). 2 504 U.S. 298 (1992).

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